

REMARKS

In ¶ 6 of the Office Action, the drawings were objected to because they include a reference numeral not mentioned in the written description. In response to this objection, the written description has been amended to refer to the missing reference numeral 48. Therefore it is believed this objection to the drawing has been overcome.

In ¶ 7 of the Office Action, the drawings were further objected to because Figure 2 fails to show the line of weakness 22. In response to this objection, the Applicants have proposed to amend Figure 2 to show the lines of weakness 22, thereby overcoming this objection as well.

In ¶ 8 of the Office Action, product claim 46 was objected to because it recites a method step. In response to this objection, claim 46 has been amended to remove the method step and recite structure instead.

In ¶ 10 of the Office Action, claims 1-11, 22, 40-47, and 54 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Applicants traverse each ground for the indefiniteness rejection for the following reasons.

First, the Examiner asserts that claim 1 is indefinite because it recites that the first line of weakness is lower than the top of the slider, whereas the specification states on page 7, lines 26-27, that the line of weakness 22 is lower than the bottom of the slider 26. However, Applicants see no

conflict between these statements. The statement on page 7 is a description of one embodiment of the invention, whereas the claim language seeks to recite the invention more broadly. Claim 1 seeks to cover two classes of embodiments: (1) embodiments wherein the line of weakness is lower than the bottom of the slider; and (2) embodiments wherein the line of weakness is lower than the top of the slider, but higher than the bottom of the slider. These two classes both have their lines of weakness lower than the top of the slider. Support for this claim interpretation can be found on page 3 of the specification, which describes "means for continued tearing of the header material at an elevation which is lower than the top of the slider, and most preferably which is lower than the bottom of the slider" [lines 13-15]; and later describes "lines of weakness extending across the package at an elevation below the top of the slider on both walls of the header" [lines 24-26]. Thus the Applicants respectfully submit that claim 1 is not indefinite.

In the second indefiniteness rejection, claims 11, 22 and 54 were rejected on the ground that the phrase "integrally formed" is indefinite and vague because it is unclear whether Species 1 or 4 is being described. The Applicants respectfully traverse this ground of rejection and believe that the phrase "integrally formed" has a clear meaning. The written description (p. 7, lines 10-13) states:

The sealed header 16, which provides a tamper-evident feature, comprises front and rear walls that

may be integrally formed with or heat sealed to the front and rear walls, respectively, of the receptacle.

(Emphasis added.) Figure 2 (Species 1) clearly shows the headers walls "integrally formed" with the receptacle walls, while Figure 5 (Species 4) clearly shows the headers walls "heat sealed" to the receptacle walls. Consequently, the Applicants can see no basis for the assertion that the phrase "integrally formed" is indefinite.

In the third indefiniteness rejection, claims 40-44 and 48 were rejected on the ground that the limitation "line of weakness" having ends at different elevations is vague and indefinite because it contradicts the specification. Again the Examiner has mistakenly compared claim language with one disclosed embodiment while ignoring another disclosed embodiment on which the rejected claims read. More specifically, the embodiment shown in Figure 1 (to which the Examiner appears to refer) comprises a header having an inclined slit 20 that extends to the elevation of a horizontal line of weakness 22. Later, however, the written description states that "lines of weakness may be employed in place of slits" (p. 8, line 26). If lines of weakness are substituted for the slits, then the header will have an inclined line of weakness that extends to the elevation of a horizontal weakness 22. This feature is explicitly recited in independent claim 41 and is fully supported by the specification. With regard to claim 48, the Applicants are puzzled by the

rejection because claim 48 does not contain the limitation that forms the basis for the rejection, to wit, a line of weakness that extends from a first elevation to a second elevation. Therefore, it is believed that this ground for rejection should also be withdrawn. [The rejection of claim 40 is moot in view of the cancellation of that claim.]

In ¶ 12 of the Office Action, claims 1-11, 13-22, 33, 40-50, 52, 54 and 55 were rejected as being clearly anticipated by U.S. Patent No. 6,273,607 to Buchman. The Applicants will treat this ground of rejection as if also applied to new claims 56 and 57. The rejection is moot as applied to canceled claims 2 and 40. The Applicants traverse this ground of rejection for the following reasons.

Amended independent claims 1 and 13 each recite a header comprising a slit that extends between first and second elevations. Also, claims 1 and 13 have been amended to recite that the slit is defined in the header wall by a pair of mutually parallel internal edges of equal length and separated by substantially no gap. Buchman shows no such slit. Instead, openings 33 and 37 are cutouts, not slits as recited in Applicants' claims. Accordingly, claims 1 and 13, as well as claims 3-11 and 14-22 dependent thereon, are not anticipated by Buchman.

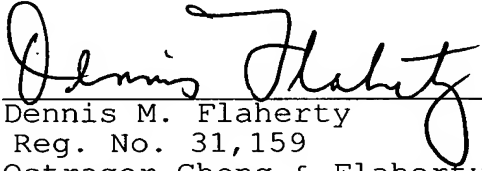
The anticipation rejection is silent concerning the bases for rejecting independent claims 21, 41 and 48, none of which recite a slit. Instead, claim 21 recites a header wall

comprising a line of weakness that traverses a range of elevations. In Buchman, the line of weakness 38 does not change in elevation, so claim 21 cannot be anticipated by Buchman. Similarly, claim 41 recites a header comprising a line of weakness that extends from a first elevation above the top edge of a zipper to a second elevation below the top edge of the zipper, which is not shown in Buchman. Claim 48 recites a header comprising a tear notch at a first elevation and a line of weakness at a second elevation below the first elevation. In Buchman, the line of weakness is at the same elevation as the bottom of the opening. Finally, new claim 56 recites a header comprising a line of weakness that changes elevation from above the top of the slider to below the top of the slider, which feature is not disclosed by Buchman. Thus the Applicants respectfully submit that the Office Action sets forth no support for the anticipation rejection of claims 21, 41 and 48 based on Buchman. Claim 56 is also not anticipated.

In view of the foregoing, the Applicants submit that this application is now in condition for allowance. Reconsideration of the application and allowance of claims 1, 3-11, 13-22, 33, 40-50, 52, 54 and 55-57 are hereby requested. Since it is believed that generic claims are now allowable, examination and allowance of claims 12, 23, 51 and 53 is also requested, which were withdrawn from further consideration (see § 5 of the action).

Respectfully submitted,

January 30, 2004  
Date

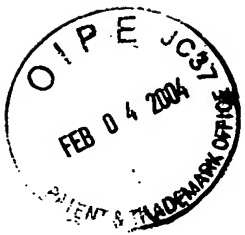
  
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January 30, 2004

  
Dennis M. Flaherty



ANNOTATED MARKED-UP DRAWING

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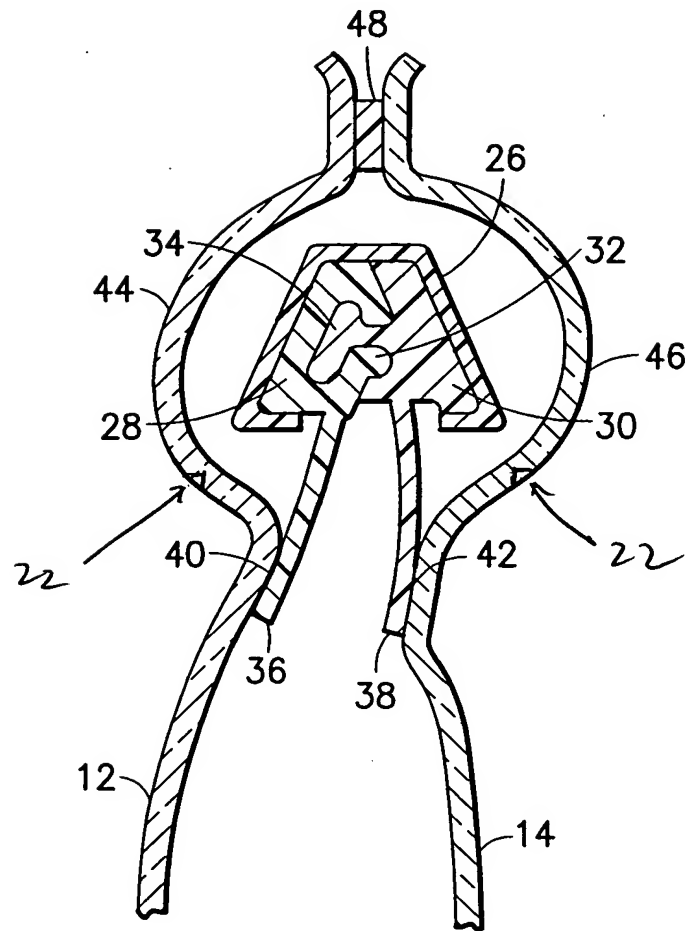


FIG.2